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Legal Implications of Laparoscopic Complications

LET ME JUST COVER THE HIGHLIGHTS of what might concern you in regard to laparoscopy. The informed consent doctrine applies differently in different states. Some states require more disclosures by physicians to patients than do other states in order to secure an adequately-informed legal consent. But let me try to give some minimal concept as to what probably would protect you in most states. If we can avoid considering laparoscopy as simple (and we can always avoid telling a patient it is simple) you have avoided 90 percent of the problem of informed consent. It's as simple as that. You never, never tell a patient that any laparoscopic procedure, either for diagnostic or therapeutic purposes, is simple; and you will have avoided most of the problems associated with it.

I think that all of your laparoscopic procedures should have some type of written consent form. Somewhere in the middle of the form, put the statement that this procedure, like all operative procedures, may be subject to serious complications or even death. You can use that language somewhere in the middle of your form. Now, I am not telling you to list all of the complications. I'm not telling you not to, either. But if that is the minimal disclosure required, I don't think it is going to harm many patients. First of all, they have to read it. Second of all, they have to understand it. And most patients realize the generalities of "serious complications or death." And as long as there is evidence of some type of disclosure on a minimal basis such as that, I think you've avoided another 9 percent of the problem, in addition to the 90 percent avoided by not telling them it's simple. If there is any question concerning the indications for the procedure, then you have to go farther. There's no way of justifying the performance of a non-indicated procedure without the patient's knowing it's not indicated . . . or without the patient's knowing that there are questions concerning its indications. If that's true, then you've got to disclose it and go further in terms of the risks involved, so that the patient is then making a decision along with you as to whether the procedure should be performed at all . . ."

—DON H. MILLS, MD, JD, *Los Angeles*

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